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10/581,314

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Ilkka Limma

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02/26/2010

THE NATH LAW GROUP

112 South West Street

Alexandria, VA 22314

EXAMINER

LONG, ROBERT FRANKLIN

ART UNIT

PAPER NUMBER

3764

MAIL DATE

DELIVERY MODE

02/26/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/581,314 | Applicant(s) LIMMA ET AL. | |
| | Examiner Robert F. Long | Art Unit 3764 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 27-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendment filed 10/19/09 has been entered. Claims 1-32 are pending in the application. Newly submitted claim 27-32 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The method of transmitting over a short-range or standard wireless link, receiving device being carried, using different user interfaces, and a barometer could be performed with a wide variety of portable electronic monitoring devices (i.e. pedometers, portable/wearable electronic feedback devices, and sensor feedback systems) for measuring sports activities and pieces of sports activity thereof.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 27-32 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore selection means for selecting the sport activity information on the receiving device must be shown in order to understand how a user selects and receives information or the feature(s) canceled from the claim(s). Also it is unclear if this is a single measurement device. Interfaces 32/34 refer back to element/device 30 of figure 3. Per amendment there is now only device

20. Since the amendment is referencing a singular device it is also is not in accord with the drawing of figure 3. On page 7 of applicant's specification states the invention is both a measurement device and a communication interface: "the invention is that single measurement device can be used to transmit all relevant all information" and "the invention provides a standard communication interface into which manufactures of suitable equipment...shall connect to". Thus, per the specification and drawing examiner contends it is not clear how many devices, interfaces, and/or displays there are. The correct number of devices must be shown or labeled in order to understand how the device or devices function or the feature(s) canceled from the claim(s).

No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

Art Unit: 3764

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: The phrase “device that can be attached e.g. to an arm of the user” does not describe the means or mechanism as to how the device is attached to a user. The drawings also do not show the device being attached to a user. An apparatus and/or method comprising the structure and means of how the device is attached to the arm of a user must be described and/or shown.

The amendment to the specification “a measurement device 20 that was already discussed in more detail with Figure 2” is still not clear with respect to the drawing indicating device 30. It is still not clear if device 30 is the same as device 20; since device 30 is not discussed anywhere in the specification per new amendment. Therefore it is still not clear which device is being referred, if they are the same, or if it is a drawing error. Also it is not clear how many displays there are.

Applicant states: “further includes two different user interfaces, a runner user interface 32 and a sailor user interface 34. Runner user interface 32 is typically used in smaller devices, e.g. wristwatches etc. Sailor user interface 34 may be displayed on a larger display. Therefore, it can be used to convey more information to a user. The transmission of measured activity information via a wireless interfaced interface was also discussed in more detail with FIG. 2”, (page 12, lines 3-13).

These interfaces 32/34 refer back to element/device 30. Per amendment there is now only device 20. Since the amendment is referencing a singular device it is also not in accord with the drawing of figure 3. On page 7 of applicant's specification states the invention is both a measurement device and a communication interface: "the invention is that single measurement device can be used to transmit all relevant all information" and "the invention provides a standard communication interface into which manufactures of suitable equipment...shall connect to". Thus, per the amendment to the specification and drawing errors examiner contends it is not clear how many devices, interfaces, and/or displays there are.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The amended specification is not in accord with the drawing. The amended phrase "FIG 3 includes a measurement device 20 that was already discussed in more detail with Figure 2." FIG 3 indicates another device enumerated as "measurement device 30" which is not described in the specification. Also, the later part of the specification indicating the measurement device 20 has

Art Unit: 3764

interfaces 32/34, refers back to element/device 30 of figure 3 which indicates there are more than one measurement devices. Moreover, applicant states “the invention provides a standard communication interface into which manufactures of suitable equipment...shall connect to”, (page 7, applicant's specification). Thus, per the amendment to the specification and drawing examiner contends it is not clear how many devices, interfaces, and/or displays there are.

Claims 1-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Per the amendment to the specification and drawing errors examiner contends it is not clear how many devices, interfaces, and/or displays there are to enable one skilled in the art to make the invention not knowing correct number of devices/elements make up the invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-26 are rejected under 35 U.S.C. 102(b) as being anticipated by **Root et al. (US 6013007 A)**.

Regarding claims 1-26, Root et al. discloses a measuring device (feedback device 101 figure 6) and system (feedback device 101, headphones 202, and antenna 301, with satellite 204 to form communication). See figure 3 below -

U.S. Patent

Jan. 11, 2000

Sheet 3 of 11

6,013,007

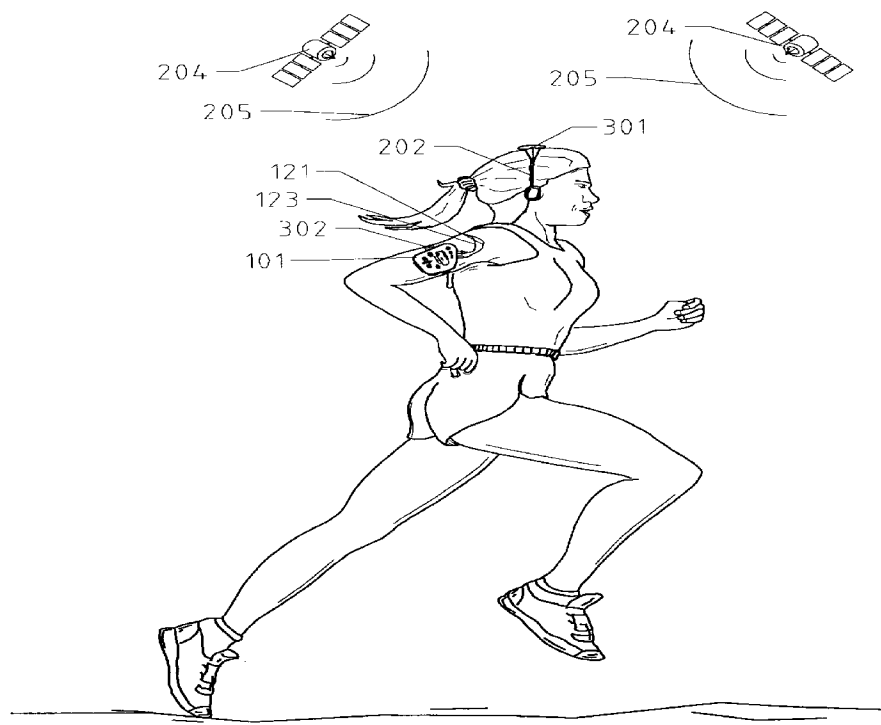


Fig. 3

Root also discloses a method of transmitting via a transmitter (modem 613, figure 6) and providing at least one individual with feedback based on a measured sports activity (running figures 2-3) information, wherein the system and method

Art Unit: 3764

comprises: a measurement device (feedback device 101 having measurement barometric sensor 610, figure 6) comprising a first processor (CPU 602, figure 6), a plurality of measuring elements (sensors 610-612, figure 6) configured to measure a plurality of quantities relating to a sports activity, a first memory (memory 608, figure 6) configured to store measurement data provided by the measuring elements comprising a GPS receiver (604, figure 6), barometric sensor (610), heart sensor (611, figure 6), and a thermometer, (body temperature sensor 612, figure 6), and a transmitter (modem 613, figure 6) configured to transmit sports activity (running figures 2-3) information during the sports activity (running figures 2-3) to at least one a receiving device via a local communication link according to a communication protocol, (feedback transfer column 8, lines 59-67); and the receiving device (GPS receiver module 604, figure 6) comprising a receiver (antenna 301, figure 6), configured to receive a transmission from the measurement device during the sports activity (running figures 2-3) via a local communication link, wherein the transmission includes sports activity (running figures 2-3) information measured with the measurement device (feedback device 101, figure 6), a second memory (built in memory of GPS receiver module 604, figure 6) configured to store at least one definition based on which a predefined set of pieces of sports activity (running figures 2-3) information is selected from the received sports activity (running figures 2-3) information, and a second processor (built in processor of GPS receiver module 604, figure 6) configured to select the predefined set of pieces of sports activity (running figures 2-3) information from the received sports activity (running figures 2-3) information based on the at least one definition, which is defined based on the sport in

Art Unit: 3764

question, stored on the second memory (built in memory of GPS receiver module 604, figure 6); and at least one feedback device (feedback device 101, figure 6) configured to provide the at least one individual with feedback on a user interface display based on the selected sports activity (running figures 2-3) information, (column 4, lines 4-67, column 5, lines 1-67, figures 1-12). See figure 6 below for electrical schematic of the feedback device –

U.S. Patent

Jan. 11, 2000

Sheet 5 of 11

6,013,007

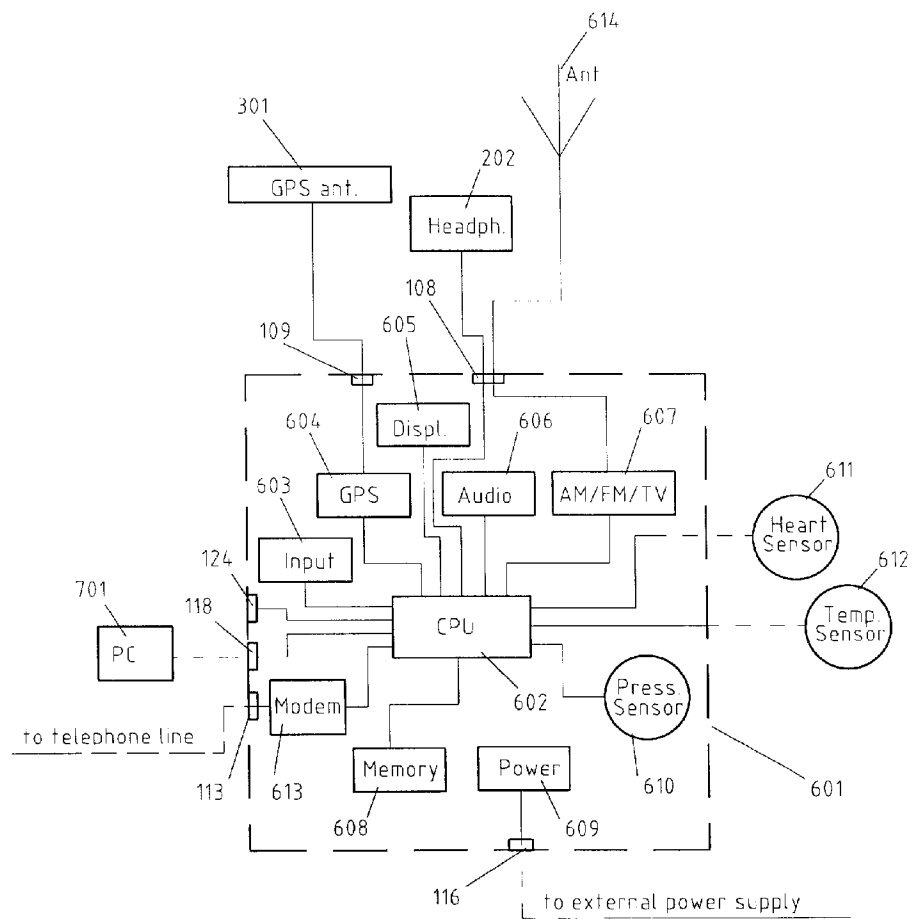
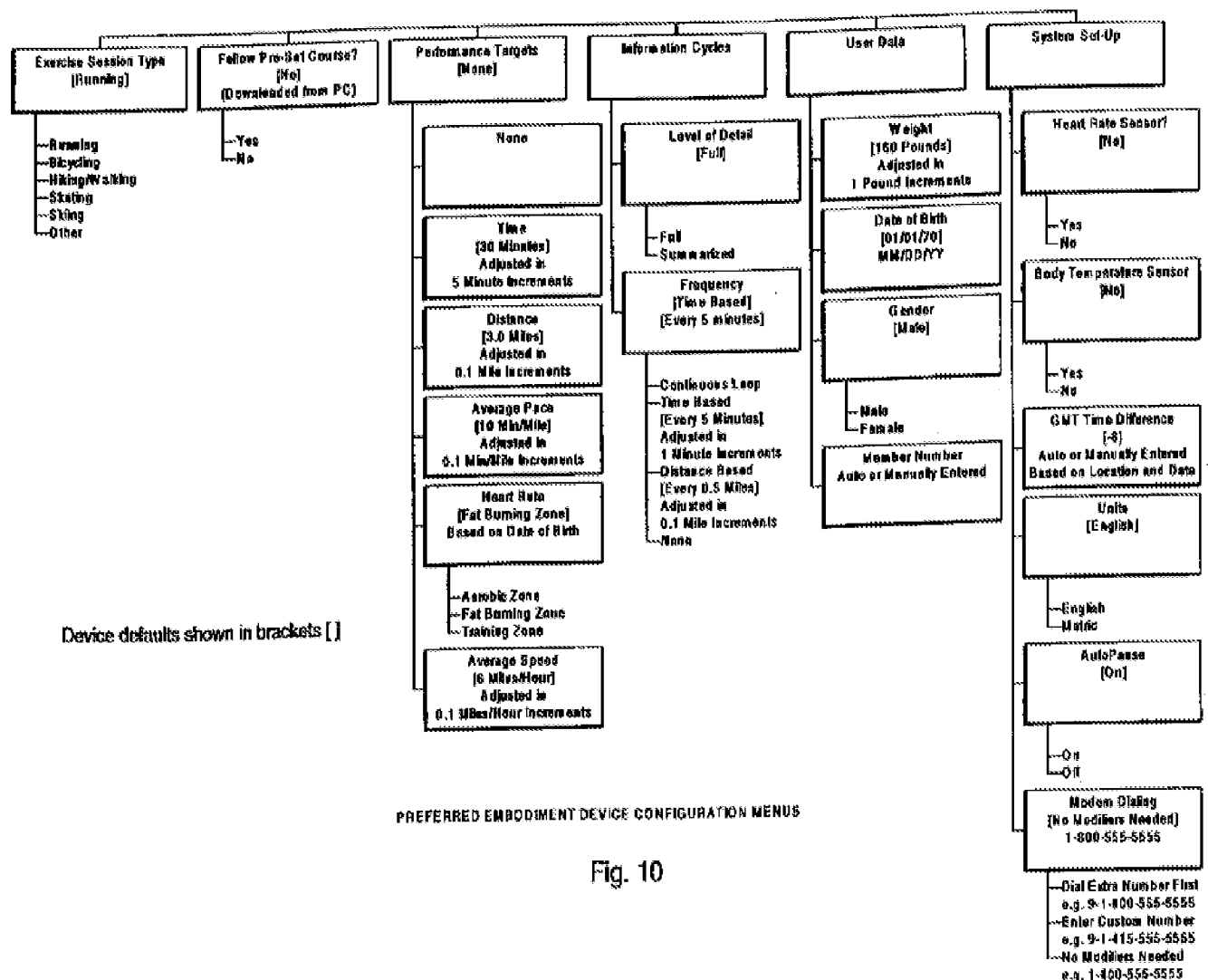


Fig. 6

Root et al. also discloses the system and method comprises the feedback device (101, figure 6) a display having graphical features, geographic position on display 112, column 4, lines 10-15), voice signals (audio module 606, column 35-64), ear piece, (headphones figures 2-5), and a speaker (column 11, lines 1-5). Root et al. also discloses a menu and selection choices for the desired activity, (column 6, lines 42-49, figure 10). See figure 10 below for menu selection and activity settings –



Root et al. also disclose the method of setting the feedback input and output data to a users desired needs and the method operating the device, (*column 6, lines 63-67, column 8, lines 1-67, column 9, lines 1-62*)

Root et al. states, *"Before exercising, the athlete turns on the GPS-based personal performance monitor and feedback device 101 (FIGS. 1A and 1B) and sets his/her preferences using the menu control buttons 115 and display 112. Preference options include, by way of example, performance targets (e.g., total distance, exercise session time, and/or average speed or pace), frequency of feedback information cycles (e.g., continuous, time-related, distance-related, or none), type of feedback information (e.g., full or summarized), and personal data (e.g., gender, birth date, and body weight). Certain preference options may only need to be set once (such as gender and birth date) or occasionally (such as weight or other variable parameters), while other preference options may be adjusted each time the GPS-based personal performance monitor and feedback device is used. Alternatively, all device settings and user preferences may be set and/or adjusted using a personal computer and an optional software program"*, (*column 6, lines 63-67, column 8, lines 1-14*).

Root et al. also discloses using the feedback device for a method of providing motivation to a user, (*column 10, lines 1-67*).

Root e al. also discloses measuring sports activity information with a measurement device comprising a plurality of measuring elements (sensors 610-612, GPS device 101, (CPU 602) connected to a processing unit, (*column 1, lines 8-25*).

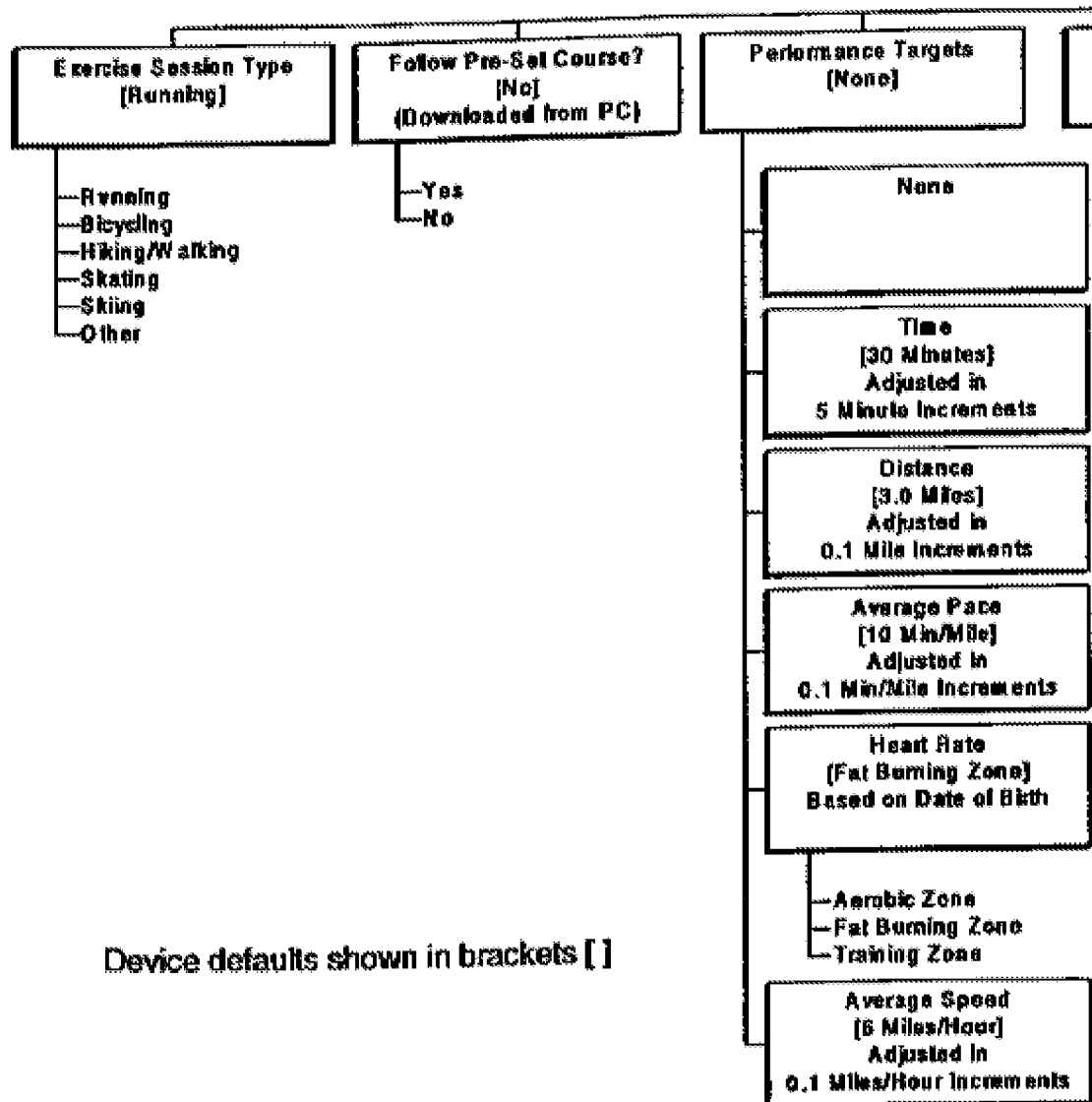
Art Unit: 3764

Root et al. states: *“performance monitoring of outdoor athletes, such as runners, bicyclists, hikers, walkers, skaters, skiers, and so forth, and providing the athlete with real-time performance feedback and optional long-term trend analysis”, (column 1, lines 8-14).*

Root et al. states: *In addition to audio performance feedback, measures of athletic performance are simultaneously scrolled on the display 112 during each feedback cycle, (column 4, lines 35-40).*

Also in figure 10 Root et al. shows the selection of the sport in question (run, bike, skate, ski, and other) and target/pieces of information to inquire about the sport in question –

Art Unit: 3764



Response to Arguments

Applicant's arguments filed 10/19/09 have been fully considered but they are not persuasive. Per the amendment to the specification and drawing errors examiner contends it is not clear how many devices, interfaces, and/or displays there are and the arguments with respect to a plurality of receiving devices is moot. Also, with respect to root et al's feedback device only being a single device, Root discloses the feedback measuring device interacting/transmitting with more than once receiving device, (column 6, lines 1-67, figures 8-9).

Root et al. states: “*GPS-based personal performance monitor and feedback device 101 connected to a remote computer 801 and modem bank 802 via its internal modem 613 and a standard telephone line plugged into connector 113*”, (column 6, lines 12-29, figure 8).

Figure 8 below shows the feedback measuring device transmitting data to a plurality of receiving devices -

U.S. Patent

Jan. 11, 2000

Sheet 7 of 11

6,013,007

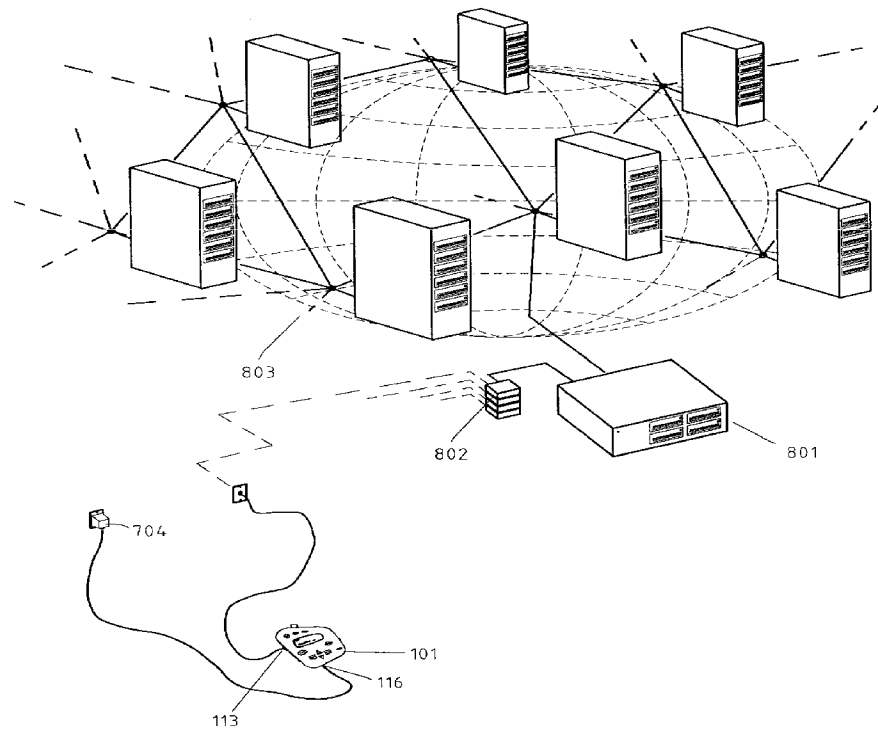


Fig. 8

Therefore, the prior art of record discloses the intention as claimed in the text.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert F. Long whose telephone number is (571)270-3864. The examiner can normally be reached on Monday-Friday (7:30-5).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571) 272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3764

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert F Long/
Examiner, Art Unit 3764
Thursday, February 04, 2010
/Steve R Crow/
Primary Examiner, Art Unit 3764